



September 2, 2003

Dear *Name**

This is in response to your letter concerning the child labor provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.* You seek guidance concerning the application of Child Labor Regulation No. 3 (Reg. 3), 29 CFR 570.31-.38 (a copy of which is enclosed), to minors employed by the City of *Name* who, as part of their employment duties, load and unload tools from the trucks which transport the workers and tools.

FLSA section 3(l), defining "oppressive child labor," expressly prohibits children under the age of 16 from doing any work other than that which the Secretary of Labor permits, by order or regulation, because it does not interfere with their schooling or health and well-being (29 U.S.C. 203(l), *see also* 29 CFR 570.117-.119). The Secretary's declaration of what forms of labor are not deemed "oppressive" for children between the ages of 14 and 16 appears in Reg. 3.

Reg. 3 identifies a number of occupations or activities which are specifically prohibited for these youngsters without regard to the type of business in which their employer is engaged (*e.g.* "operating ... any power-driven machinery other than office machines") (sec. 570.33). This section of Reg. 3 incorporates by reference all of the prohibitions contained in the Hazardous Occupations Orders which identify occupations which are "particularly hazardous" and, therefore, banned for 16- and 17-year-olds (*e.g.*, working as an "outside helper" on a motor vehicle) (sec. 570.33(e)). Further, Reg. 3 contains special rules for 14- and 15-year-olds employed in retail, food service and gasoline service establishments; certain activities are expressly authorized in such employment (section 570.34(a)) whereas other activities are expressly prohibited (sec. 570.34(b)). For example, clerical work, cashiering, and clean up work are authorized, whereas "all work requiring the use of ladders, scaffolds, or their substitutes" is prohibited. These special rules apply only in the designated types of businesses.

Because the City of *Name* is not a retail, food service or gasoline service establishment, the special rules in section 570.34 (both authorizations and prohibitions) are not applicable to the employment of minors by the City, except where there is some discrete operation or division which could legitimately be characterized as such an establishment and therefore would be subject to these rules (*e.g.*, minors employed in a food service operation at a City park). A strict interpretation of Reg. 3 would prohibit the City of *Name* from employing 14- and 15-year-old workers in *any* jobs other than those which occur in those discrete operations or divisions that may be characterized as retail, food service or gasoline service establishments. However, in recognition of the importance of youth employment programs operated by the City of *Name*, and other public sector employers, to provide safe and meaningful developmental opportunities for young people, the Department of Labor, as a matter of prosecutorial discretion, does not and



will not cite Reg. 3 Occupations violations for the employment of 14- and 15-year-olds by state and local governments as long as that employment falls within the occupations authorized by Reg. 3 (29 CFR 570.34(a)) and does not involve any of the tasks or occupations prohibited by Reg. 3 (sections 29 CFR Part 570.33 and 570.34(b)). The other provisions of Reg. 3 – particularly the restrictions on hours of work – are fully applicable to the employment of such minors. These other provisions are and will continue to be enforced.

Your letter states that the City employs 14- and 15-year-olds in maintenance jobs at City parks. You indicate that these minors are transported by truck, along with their tools, to their job sites, and that the minors load and unload the tools from the trucks. You inquire whether this activity is prohibited by Reg. 3. There are several provisions of Reg. 3 which prohibit this work by 14- and 15-year-old employees.

Section 570.33(c) of Reg. 3 prohibits these minors from service as "helpers" on motor vehicles. Loading and unloading materials from trucks and vans constitutes helper service on the vehicles, where the purpose of the operation of the trucks and vans is the transportation of such materials. In addition, section 570.33(f)(1) of Reg. 3 prohibits minors from working in connection with the transportation of property by highway. Loading and unloading property, which is then transported by trucks on public roads, would be prohibited by this provision when the purpose of the operation of the trucks is such transportation.

It appears that the City park maintenance crew trucks are operated in large part, if not entirely, to transport workers and their personal tools to the work sites. Thus the loading and unloading of such transported property by workers under 16 years of age would normally be prohibited.

You also inquired about the definition of "goods" under the FLSA. Neither of the Reg. 3 prohibitions discussed above is limited to situations where the minors are handling "goods" as defined in the FLSA (see 29 U.S.C. 203(i)). The section 570.33(c) prohibition deals with service as helpers on motor vehicles, with no express provision as to the nature of the materials carried by the vehicles. The section 570.33(f)(1) prohibition explicitly speaks of "property" rather than "goods." Therefore, these Reg. 3 provisions are applicable regardless of whether the tools would be considered "goods" for other purposes under the FLSA. As you know, our *Name* District Office conducted an investigation of the City of *Name* under the child labor provisions of the FLSA and assessed a civil money penalty for certain violations, including those involving the loading and unloading of trucks by minors under 16 years of age. The City of *Name* has paid the civil money penalty and agreed to future compliance with the child labor provisions. We appreciate the City's cooperation and commitment to keeping its young workers safe.

The Department of Labor has carefully considered the information submitted by the City regarding the transporting of minors, and the light hand tools they use, to and from City



job sites. For purposes of future compliance, the Department of Labor will not assert a violation of the child labor provisions in those instances where 14- and 15-year-olds load and unload the light hand tools – such as rakes, hand-held clippers, and spades – they personally will use and then ride in the enclosed passenger section of the vehicle. This enforcement policy will not extend to other prohibited transportation-related work such as the loading or unloading of materials other than the light hand tools the minors use, such as trash or garbage, power-driven equipment such as lawn mowers and weed trimmers – the use of which by this age group is prohibited under Reg. 3. Also, these minors may not perform such helper duties as assisting the operator of the vehicle while “backing up” or clearing narrow spaces. Finally, this enforcement position is established with the understanding that the City of *Name* will remain in compliance with all other provisions of Reg. 3 and continue to provide its young workers with adequate safety training, continuous supervision, and appropriate protective clothing and gear. The Department will extend this enforcement policy to the employment of minors by other local and state governments when these same circumstances exist.

It is also important to note that Hazardous Occupations Order No. 2 (HO 2), 29 CFR 570.52 – which is incorporated into Reg. 3 – prohibits employees under 18 years of age from work in the occupation of "outside helper" on motor vehicles operated on any public road or highway. This prohibition applies to any work that includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting goods. "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

I appreciate and applaud the City of *Name* efforts to both provide teens with early, positive work experiences and to ensure that those experiences are safe and in compliance with the child labor provisions. Our *Name* District Office stands ready to assist the City, should you have any further questions concerning the child labor standards.

We trust this information is responsive to your inquiries.

Sincerely,
Tammy D. McCutchen, Administrator

Enclosure

*Note: * The actual name(s) was removed to preserve privacy.*